IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 901 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
MINOR GORDHAN VELJI & ORS. - Respondent(s)

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
Shri Hriday Buch for Respondent(s) : 1.
None for Respondent(s) : 2, 3 & 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/08/2007

ORAL JUDGMENT

The appellant-Insurance Company, being aggrieved by the

award dated 18th April, 1990 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Junagadh in M.A.C.P. No.486 of 1984, is before this Court with a submission that as the deceased was a passenger in the goods vehicle, the Insurance Company could not be held liable.

2. The dispute before the Court below was that whether the respondent-Gafar Ibrahim Garana (respondent No.4) was the owner of the vehicle or respondent – Ramji Kurji had become the owner of the vehicle. It is to be noted that in relation to the said accident, which took place on 28th June, 1984, as many as four claim cases came to be filed. Other three claim cases, M.A.C.P. Nos. 479 of 1984, 35 of 1985 and 492 of 1984, were disposed of on 14th March, 1990 by the learned Motor Accident Claims Tribunal (Main), Junagadh. In the said matters, the dispute that who was the owner of the vehicle, was finally decided by this Court, holding that the respondent - Gafar Ibrahim Garana was the owner of the vehicle. In view of the said order dated 10th August, 2007 passed by this Court in First Appeal No.898 of 1990, 899 of 1990 and 890 of 1990, Shri Rajni Mehta, learned Counsel for the appellant-Insurance Company, submits that he be allowed to delete the name of respondent No.3 – Ramji Kurji. The prayer is allowed. Office to make necessary corrections in the cause title within one week.

3. Placing reliance upon the judgement in First Appeal No.898 of 1990 (***The New India Assurance Co. Ltd. vs. Abdul Sattar Alibhai & Ors.***), decided on 10th August, 2007 (arising out of the same accident), Shri Rajni Mehta submitted that the Insurance Company would not be held liable to answer the claim made by the passenger or by the claimants/dependents claiming, in view of the death of the passenger travelling in the goods vehicle.

4. Shri Hriday Buch, learned Counsel for the respondents-claimants, however, submitted that the Insurance Company would be answerable to the award made in favour of the claimants.

5. In view of the judgement of the Apex Court in the matter of ***New India Insurance Company Limited vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], the argument of Shri Mehta has to be accepted. Once it is proved that the person was travelling in a goods vehicle either for hire or reward or as gratuitous passenger or passenger with his own goods, then, the Insurance Company cannot be held liable.

6. The appeal filed by the Insurance Company is allowed. The Insurance Company has already deposited the amount with the Claims Tribunal. If such amount is not fully disbursed, then, the balance would

be given back to the Insurance Company and in case, it is partly given or fully given, then too, to the extent of payment of the compensation amount to the claimants, the Insurance Company would be entitled to recover the said amount from the driver and owner of the offending vehicle with interest at the rate of 6% per annum from the date of the deposit till the date of realisation. No costs.

[R.S.Garg, J.]

*kamlesh**